IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.Rev.Pet.No. 3537 of 2007()

CRA.660/2006 of SESSIONS COURT, KOZHIKOE
ST.1708/2002 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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REVN. PETITIONER: REVN. PETITIONER/APPELLANT/ACCUSED

SUJA SEKHARAN, S/O. BHARATHAN,
AGED 47 YEARS, MAVILEDATH HOUSE, ATHANICKAL,
WEST HILL, KOZHIKODE.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

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1. K.UNNIKRISHNAN, S/O. CHANNAPPU NAIR,
KANDIYIL HOUSE, PERUVAYAL AMSOM,
KAYALAM DESOM, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3537 OF 2007

Dated this the 1st day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1708/2002 on the file of the J.F.C.M.-IV, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner raised the following submissions in support of the revision:-

The specific case of the accused is that he had admittedly no transaction with the complainant and that the complainant had come by Ext.P1 cheque some how or other and misused the same leading to the institution of the present complaint. The complainant has not pleaded in the complaint the exact date on which Ext.P1 cheque was handed over by the accused to the complainant. All that he says is that the borrowal was on 20.3.2002 and sometime in the last week of June, 2002 the revision petitioner gave the cheque in question as a post-dated cheque. The revision petitioner/accused had filed CMP No.1407/05 before the trial court to summon the attendance register from the Southern Railway for the period from 20.3.02 to 25.7.02 to prove that during the said period he was in his office at Kurla and, therefore, the alleged handing over of the cheque by the accused to the complainant as pleaded by the complainant would be false. The courts below have not considered the said petition in the right perspective. If the attendance register would support the contention of the defence, then that would have the effect of the accused rebutting the presumptions under section 118(b) and 139 of the Negotiable Instruments Act.

5. I am afraid that I cannot agree with the above submissions. The complainant has specifically pleaded that the revision

petitioner/accused borrowed the sum of Rs.50,000/- on 20.3.02 undertaking to repay the sum within three months and when he demanded the money back sometime during the last week of June, 2002, the accused requested for one more month's time to repay the amount and issued Ext.P2 post-dated cheque dated 22.7.02. The exact date on which the cheque was handed over to the complainant is not mentioned in the complaint. But, having regard to the common course of human conduct, nobody can be expected to remember exactly the date of handing over of a cheque. Moreover, the case of the complainant examined as PW1 is that the cheque was handed over at the residence of the complainant. It was not elicited as to who handed over the cheque. Hence, even assuming that the attendance register requested to be summoned would prove that the revision petitioner was on duty at the Kurla office during the period from 20.3.02 to 25.7.02, that would not improbabulise or falsify the case of the complainant. That apart, there is nothing conclusive about the attendance register maintained in an office of the Southern Railway which is intended for the maintenance of internal discipline in the office.

6. The above defence of the accused has to be appreciated in the light of yet another circumstance. As against the case of the complainant that the accused borrowed a sum of Rs.50,000/- from him on 20.3.02, the stand taken by the accused is one of total denial. He

would even go to the extent of saying that he had no transaction at all with the complainant. He has no case that Ext.P1 cheque does not pertain to the account maintained by him. He has no satisfactory explanation as to how the said cheque happened to come into the possession of the complainant. All that he says is that the complainant some how managed to get at the cheque. Admittedly, he has not lodged any complaint alleging the loss of his cheque leaf. Admittedly, he did not also countermand payment to the drawee bank. Under these circumstances, it cannot be said that the conclusion reached by the courts below is unsustainable. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.52,000/- (Rupees fifty two thousand only) within

four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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